

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

(Alexandria Division)

2016 JUL -5 A 11: 26

DAVID E. HARVEY BUILDERS, INC., d/b/a  
HARVEY-CLEARY BUILDERS,

Plaintiff,

v.

TYSONS CORNER HOTEL I LLC,

Defendant.

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Case No. 1:16-CV-853  
(LO/TCB)

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441(a) and 1332(a)(1), Defendant Tysons Corner Hotel I LLC (“TCH”) hereby removes the case currently pending in the Circuit Court for Fairfax County, Virginia, that is captioned as *David E. Harvey Builders, Inc., d/b/a Harvey-Cleary Builders v. Tysons Corner Hotel I LLC*, Case No. 201-07826 (the “Fairfax Action”), to this Court, stating as follows:

1. On June 2, 2016, Plaintiff David E. Harvey Builders, Inc., d/b/a Harvey-Cleary Builders (“HCB”), filed the Complaint in the Fairfax Action and emailed a courtesy copy of the Complaint to counsel for TCH. HCB also formally served the Complaint on TCH on June 15, 2016. The Complaint is attached hereto as Exhibit 1, as required by 28 U.S.C. § 1446(a).
2. The Fairfax Action involves delays on a construction project in McLean, Virginia, for which TCH, the owner, hired HCB as the general contractor. HCB asserts claims for breach of contract, breach of the covenant of good faith and fair dealing, quantum meruit, and fraud.
3. The federal courts have original jurisdiction over the Fairfax Action, *see* 28 U.S.C. § 1332(a), for the following reasons:

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a. The amount in controversy exceeds \$75,000. In the Complaint, HCB seeks \$21.15 million in damages. *See* Exhibit 1, at 19 (seeking \$21.15 million in damages); 28 U.S.C. § 1446(c)(2) (“[T]he sum demanded ... in the initial pleading shall be deemed to be the amount in controversy”).

b. The parties are citizens of different states. HCB is a citizen of Texas, because it is a corporation organized and existing under the laws of Texas with its principal place of business in Texas. *See* 28 U.S.C. § 1332(c)(1) (regarding citizenship of corporations). TCH is a citizen of Delaware, California, and Alaska, because (1) it is a Delaware limited liability company with its principal place of business in California; (2) the Alaska Permanent Fund Corporation, a member and 50 percent owner of TCH, is an Alaska corporation with its principal place of business in Alaska, *see, e.g., Cent. W. Va. Energy Co. v. Mountain State Carbon, LLC*, 636 F.3d 101, 103 (4th Cir. 2011) (“[T]he citizenship of a limited liability company [such as TCH] ... is determined by the citizenship of all of its members”); (3) Macerich Tysons Corner Hotel TRS LLC (“MTCH TRS”), also a member and 50 percent owner of TCH, is a Delaware limited liability company with its principal place of business in California, *see, e.g., id.*; and (4) Macerich Management Company, the sole owner of MTCH TRS, is a California corporation with its principal place of business in California, *see, e.g., id.*

4. The Fairfax Action is removable to this Court, *see* 28 U.S.C. § 1441, for the following reasons:

a. As explained above, the federal courts have original jurisdiction over the Fairfax Action. *See* § 1441(a).

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b. This Court's jurisdiction embraces the place where the Fairfax Action is pending, *i.e.*, Fairfax, Virginia. *See id.*

c. TCH is not a citizen of Virginia. *See* § 1441(b)(2).

5. This Notice is timely. As noted above, counsel for TCH received a courtesy copy of the Complaint on June 2, 2016. "The notice of removal ... shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading." 28 U.S.C. § 1446(b). The receipt of a courtesy copy of a complaint triggers this 30-day deadline. *E.g., Kurihara v. CH2M Hill, Inc.*, 6 F.Supp. 2d 533, 536 (E.D. Va. 1998). Thus, the deadline for this Notice is July 5, 2016.

6. If any question arises as to the propriety of this removal, TCH requests the opportunity to present additional evidence, a brief, and oral argument.

7. TCH reserves the right to assert all applicable claims and defenses in responding to the Complaint.

8. Contemporaneously with this filing, TCH is giving written notice of this filing to HCB and is filing a copy of this Notice with the Circuit Court for Fairfax County. *See* 28 U.S.C. § 1446(d).

WHEREFORE notice is hereby given that *David E. Harvey Builders, Inc. d/b/a Harvey-Cleary Builders v. Tysons Corner Hotel I LLC*, Case No. 2016-07826, Circuit Court for Fairfax County, Virginia, is removed to the United States District Court for the Eastern District of Virginia.

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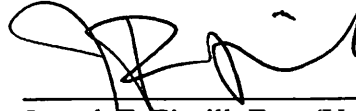
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July 5, 2016

Respectfully submitted,

**KATTEN MUCHIN ROSENMAN LLP**



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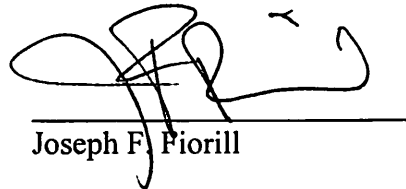
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 5, 2016, true and correct copies of the foregoing Notice of Removal were served by electronic and first-class mail on:

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